

Historic Preservation Amendment No. 09-1
Concerning: Historic Resources Preservation
- Amendments
Revised: 2/5/09 Draft No. 2
Introduced: February 24, 2009
Effective:
Sunset Date:
Ch. , Laws of Mont. Co.

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmember Knapp

AN AMENDMENT to the Historic Resources Preservation Ordinance to:

- (1) amend definitions;
- (2) require periodic notice for properties included on the Locational Atlas and Index of Historic Sites;
- (3) amend the process for designating and a removing site or a district from the Locational Atlas and Index of Historic Sites;
- (4) amend the process for allowing building permits for activity for a site or in a district included on the Locational Atlas and Index of Historic Sites;
- (5) amend the criteria for designating a site or a district on the Master Plan for Historic Preservation;
- (6) amend the process for designating a site or a district on the Master Plan for Historic Preservation;
- (7) amend the criteria for approving historic area work permits; and
- (8) generally amend the historic resources preservation ordinance.

By amending all the sections of the Historic Resources Preservation Ordinance, Chapter 24A of the Montgomery County Code.

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Chapter 24A is amended as follows:

24A-1. Purpose.

[It is the purpose of this chapter to provide for the identification, designation and regulation, for purposes of protection, preservation and continued use and enhancement, of] This Chapter establishes the method to identify, designate, and regulate historic resources and to protect, preserve, use, and enhance those sites[, or structures with their appurtenances and environmental settings, and districts of historical, archeological, architectural, or cultural value [in that portion of the county which is within] in the Maryland-Washington Regional District. Its further purpose is to preserve and enhance the quality of life in the [county] County, safeguard the historical and cultural heritage of the [county] County, strengthen the local economy, stabilize and improve property values in and around such historical areas, foster civic beauty, and [to] preserve continued utilization and pleasure of the citizens of the [county] County, the state, and the United States of America.

24A-2. Definitions.

[For the purposes of] In this Chapter, the following words and phrases have the following meanings:

Appurtenances and environmental setting: The entire parcel, as of the date [on which] when the historic resource is designated on the master plan, and structures thereon, on which [is located an] a historic resource is located, unless reduced by the District Council or the [commission] Commission, and to which it relates physically and/or visually. Appurtenances and environmental settings [shall] must include[, but not be limited to,] walkways and driveways ([whether] paved or [not] unpaved), vegetation (including trees, gardens, lawns), rocks, pasture, cropland, and waterways.

Board: The County Board of Appeals [of Montgomery County].

Commission: The [historic preservation commission of Montgomery County as described hereinafter] County Historic Preservation Commission.

Council: The County Council, which sits as the District Council when approving or amending master plans.

Demolition by neglect: The failure to provide ordinary and necessary maintenance and repair to [an] a historic site or [an] a historic resource [within an] in a historic district, whether by negligence or willful neglect, purpose, or design, by the owner or any party [in possession of such] who controls a site, which results in any of the following conditions:

- (a) The deterioration of exterior features, [so as to create or permit] creating or permitting a hazardous or unsafe condition to exist.
- (b) The deterioration of exterior walls, roofs, chimneys, windows, the lack of adequate waterproofing or deterioration of interior features or foundations which will or could result in permanent damage[, injury] or loss of [or to] the exterior features.

Director: The Director of the Department of Permitting Services, or the Director's designee.

Exterior features: The architectural style, design, and general arrangement of the exterior of [an] a historic resource, including the color, nature, and texture of building materials, and the type of style of all windows, doors, light fixtures, signs, or other similar items found on or related to the exterior of [an] a historic resource.

Locational Atlas and Index of Historic Sites: The list of sites and districts that contribute to historic, architectural, archeological, or cultural values and may be included in the Master Plan for Historic Preservation in the future. Sites and districts on the Atlas are subject to regulations if the property owner applies for permits for demolition or substantial alternations. The Atlas is referred to as the Locational Atlas.

Historic district: A group of historic resources designated in the Master Plan for Historic Preservation [which are] that is significant as a cohesive unit and

[contribute] contributes to the historical, architectural, archeological, or cultural values [within] in the Maryland-Washington Regional District [and which has been so designated in the master plan for historic preservation].

Historic resource: A district, site, building, structure, or object, including its appurtenances and environmental setting, which is significant in national, state, or local history, architecture, archeology, or culture. This includes[, but is not limited to, all properties on the "Locational Atlas and Index of Historic Sites in Montgomery County."] any resource on the Locational Atlas or the Master Plan for Historic Preservation.

Historic site: Any individual historic resource designated in the Master Plan for Historic Preservation that is significant and contributes to the historical, architectural, archeological, or cultural values [within] in the Maryland-Washington Regional District [and which has been so designated in the master plan for historic preservation].

Permit: [An] A historic area work permit issued by the Director, authorizing work on [an] a historic site or [an] a historic resource located within [an] a historic district.

Planning Board[;]: The [Montgomery] County Planning Board [of the Maryland-National Capital Park and Planning Commission].

Preservation easement [means an]: An easement held by the County to protect, maintain, or otherwise conserve [an] a historic resource.

[24A-3. Master plan for historic preservation; criteria for designation of historic sites or districts.

- (a) As part of the general plan for the physical development of that portion of the county within the Maryland-Washington Regional District, there shall be prepared, adopted and approved a master plan for historic preservation which shall constitute an amendment to the general plan

for the Maryland-Washington Regional District. Such plan shall designate historic sites and historic districts and describe their boundaries; it shall propose means for the integration of historic preservation into the planning process; and it shall suggest other measures to advance the goals of historic preservation.

(b) In considering historic resources for designation as historic sites or historic districts, the planning board shall apply the following criteria:

(1) Historical and cultural significance. The historic resource:

- a. Has character, interest or value as part of the development, heritage or cultural characteristics of the county, state or nation;
- b. Is the site of a significant historic event;
- c. Is identified with a person or a group of persons who influenced society; or
- d. Exemplifies the cultural economic, social, political or historic heritage of the county and its communities.

(2) Architectural and design significance. The historic resource:

- a. Embodies the distinctive characteristics of a type, period or method of construction;
- b. Represents the work of a master;
- c. Possesses high artistic values;
- d. Represents a significant and distinguishable entity whose components may lack individual distinction; or
- e. Represents an established and familiar visual feature of the neighborhood, community or county due to its singular physical characteristic or landscape.]

[24A-4] 24A-3. Historic [preservation commission] Preservation Commission.

- 109 (a) *Created.* [There is hereby created a commission to be known as the "historic
 110 preservation commission of Montgomery County, Maryland."] The County
 111 Executive must appoint, subject to confirmation by the County Council, a
 112 Historic Preservation Commission.
- 113 (b) *Membership.* The [commission shall] Commission must consist of 9 members
 114 [appointed by the county executive with the confirmation of the county
 115 council]. Each member must be a resident of the [county] County. The [4]
 116 fields of history, architecture, preservation, and urban design [shall] must each
 117 be represented by [a minimum of] at least 1 member qualified by special
 118 interest, knowledge, or training. The remaining members [of the commission
 119 shall] must, to the extent possible, [be selected to] represent the geographical,
 120 social, economic, and cultural concerns of the residents of the [county]
 121 County.
- 122 (c) *Officers.* The [county executive shall] County Executive must appoint the
 123 chairman and vice-chairman of the [commission] Commission, who [shall]
 124 must serve at his pleasure[, but such appointments occurring after the
 125 commission's first year of operation shall be made] after [due consideration
 126 has been given to] considering the recommendation of the [commission]
 127 Commission.
- 128 (d) *Term.* [The terms of the members of the commission shall be for] Each
 129 member serves a three-year [period and members shall continue to serve] term.
 130 A member serves until [their successors are] a successor is appointed and
 131 [qualified] confirmed.
- 132 [(e) *Vacancy.* Any vacancy in the membership of the commission caused by the
 133 expiration of a term, by resignation or death, by a superseding incapacity to
 134 discharge duties, by a removal for cause, or by any other cause creating such
 135 vacancy, shall be filled for a new term, or for the remainder of the term for

which there is a vacancy as the case may be, in the same manner as provided herein for the nomination and appointment of the initial members of the commission.]

[(f)] (e) *Removal for cause.* [A] The Executive may remove a member [may be removed] for cause [from the commission by the county executive].

[(g)] (f) *Compensation.* The members [of the commission] serve without compensation.

[(h)] (g) *Regulations.* The [commission] Commission must adopt, under method (2) of Section 2A-15 [of this Code, rules], guidelines and regulations that are necessary for:

(1) [the] proper transaction of [the] Commission business [of the commission. This includes provisions governing contested cases before the commission], including hearing and deciding contested cases; and

(2) carrying out its responsibilities under this Chapter.

[(1)](h) *Meetings.* The [commission shall] Commission must hold [such] regular meetings [which, in its discretion, are] as necessary to discharge its duties.

[Such meetings shall] Each meeting must be open to the public except when the state Open Meetings Law allows the meeting to be closed.

[(2)](i) *Staff.* [There may be appointed and assigned to the commission such employees, and the chief administrative officer shall make available to the commission such services and facilities of the county, as are necessary or appropriate for the proper performance of its duties, and the county attorney shall serve as counsel to the commission.] The County Executive must submit a budget request to the Council to provide the Commission with staff, facilities, materials, and contract services that the Executive finds are needed to administer this Chapter.

(j) *Counsel.* The County Attorney must serve as counsel to the Commission.

[24A-5] 24A-4. [Same-] Powers and duties of the Commission.

The [commission has the following powers and duties] Commission must:

- (a) [To] research historic resources, and [to] recommend to the [planning board that certain of them] Planning Board which resources should be designated as historic sites or historic districts on the [master plan for historic preservation and, hence, be subject to the provisions of this chapter.] Master Plan for Historic Preservation;
- (b) [To] recommend to the [planning board] Planning Board, as needed, any update to the inventory of historic resources [which is] contained in the ["Locational Atlas and Index of Historic Sites in Montgomery County."] Locational Atlas;
- (c) [To act upon] consider applications for historic area work permits and other matters referred to it [for action pursuant to the provisions of] under this Chapter[.];
- (d) [To] appoint members to local advisory panels where necessary to assist and advise the [commission on the performance of its functions.] Commission;
- (e) [To] recommend programs and legislation to the [council] Council and [the planning board] Planning Board where necessary to encourage historic preservation [in the Maryland-Washington Regional District.];
- (f) [To] review any legislation and proposals affecting historic preservation, including preparation of master plans, and [to make] offer recommendations [on such legislation and proposals] to appropriate authorities[.];
- (g) [To] serve as a clearinghouse for information on historic preservation for [county] County government, individuals, [citizens' associations] civic organizations, historic societies, and local advisory committees; [to] provide information and educational materials for the public; and [to] undertake activities to advance the goals of historic preservation in the [county.] County;

- (h) [To] employ or hire consultants or other temporary personnel, subject to appropriation and consistent with [county] County contract provisions, as [deemed] necessary to assist the [commission in the accomplishment of its functions] Commission; [such consultants or other personnel shall be compensated as may be provided for in the county budget.]
- (i) [To] administer [an] a historic preservation easement program and any revolving funds or grant programs to assist in historic preservation[.];
- (j) [To] advise the [planning board] Planning Board, [in the event of] if subdivision of land [containing an] would affect a historic resource, on the appurtenances and environmental setting necessary to preserve [it.] the resource; and
- (k) [To delineate] recommend the extent of appurtenances and environmental setting associated with [an] a historic site or resource proposed for the Master Plan for Historic Preservation.

24A-5. Historic preservation easement program.

- (a) The Commission must administer an easement program to preserve historic resources.
- (b) (1) An owner of a historic resource may offer the County a preservation easement to protect or conserve interior or exterior features of the historic resource and its environmental setting or appurtenances by filing an application with the Commission.
- (2) After receiving an application, the Commission must immediately forward it for review and comment to:
- (A) the Planning Board, if the historic resource is located in the Regional District; and
- (B) the appropriate municipal agency, if the historic resource is located in a municipality.

The Board and the municipal agency should submit their comments within 45 days after it receives the application. The Board and agency should evaluate the proposal, using the criteria specified in this Section, identify competing or supporting land use priorities and other relevant factors, and recommend any necessary easement terms and conditions.

(3) The Commission must review each application and decide if accepting the preservation easement would further the County's historic preservation goals. The Commission must consider, among other relevant factors:

(A) the relative significance of the historic resource;

(B) its structural condition;

(C) the owner's planned or completed preservation efforts;

(D) the existing zoning and nature of the surrounding neighborhood; and

(E) whether an easement will promote long-term survival of the historic resource.

(c) If the historic resource is designated as a historic site in the County Master Plan for Historic Preservation as an individual site or is located in a historic district, the Executive may acquire an easement if the Commission recommends it. If the historic resource is not designated as a historic site in the master plan, the Council must also approve the easement. The Commission must forward any comments received under subsection (b)(2) to the Executive and Council as appropriate.

(d) A preservation easement under this Section should be granted in perpetuity, and should include appropriate terms and conditions that:

(1) restrict changes and alterations in the property;

(2) require sufficient maintenance, repairs, and administration;

(3) authorize public access;

(4) give the appropriate government agencies the right to inspect the property;

(5) allow the easement to be assigned to the Maryland Historical Trust or other entity; and

(6) establish enforcement remedies.

(e) The County may hold a preservation easement jointly with the Maryland Historical Trust.

(f) The grantor must record each preservation easement in the County land records at the grantor's cost. The grantor must notify the state assessments office that the easement was recorded.

(g) A preservation easement may be extinguished by court action if an unexpected change in conditions applicable to the property makes it impossible or impractical to continue to preserve it. The terms of an easement regarding extinguishment should identify which changes in condition would suffice, require that the County share in any proceeds from a sale or exchange of the property after the easement is extinguished, and satisfy any applicable regulations. Sharing the proceeds may include recapture of some or all property taxes not paid by the grantor or its successor in interest as a result of the easement.

(h) The Commission may enter into a cooperative agreement with the Maryland Historical Trust or another government agency or private entity for technical assistance in administering the historic easement program. This agreement may include property evaluation, negotiation, and inspection.

(i) (1) The easement program authorized by this Section is in addition to, and does not supersede or otherwise affect, any other County or municipal

program or policy requiring the donation of a preservation easement as a condition of financial assistance. This program must be coordinated with other County and municipal easement programs.

(2) A grant of an easement under this Section does not waive or otherwise alter any County or municipal regulatory requirement applicable to the historic resource, including any requirement to obtain a historic area work permit.

(j) The Commission may adopt regulations under method (2) to administer this program.

24A-6. Historic area work permits [- Generally].

Required. [An] A historic area work permit for work on public or private property containing [an] a historic resource must be [issued pursuant to the provisions of] issued under this [chapter] Chapter before any person:

- (1) [Constructing, reconstructing, moving, relocating, demolishing] builds, rebuilds, moves, or demolishes, or in any manner [modifying, changing or altering] alters the exterior features of any historic site or any historic resource located [within any] in a historic district[.];
- (2) [Performing any grading, excavating, construction] grades, excavates, builds, or substantially [modifying, changing or altering] alters the environmental setting of [an] a historic site or [an] a historic resource located [within an] in a historic district; or
- (3) [Erecting or causing to be erected] erects any sign or advertisement ([with the exception of those signs which] except a sign that temporarily [advertise] advertises the property for sale [an historic site or an historic resource located within an historic district, or which for] or advertises a political viewpoint) on the exterior or on the environmental setting of

any historic site or any historic resource located [within any] in a
historic district.

- (b) *Exceptions.*[Nothing in this section shall be construed to require the issuance of an] A historic area work permit is not required for any ordinary maintenance, repair of exterior features, [any] customary farming operations, or [any] landscaping [, which will have no material effect on historic resource located within an historic district, of which such features are a part]. [For the purposes of clarification of] To interpret this section, the [commission shall develop and publish guidelines regarding what activities constitute] Commission must define ordinary maintenance in published guidelines and [shall send] must retain evidence that a copy of these guidelines [by registered mail] was sent to [all owners] each owner of a historic [resources] resource designated on the master plan.

- (c) *Disclosure [requirements].*

(1) [Applicants for permits] Each applicant for a permit to demolish or substantially alter the exterior features of any historic site or historic resource located [within an] in a historic district [are required to disclose its identification as such in writing on any application therefor] must identify the site as historic in the application.

(2) Any person who [shall undertake] undertakes any work [as stated] defined in subsection (a) [of this section] without first obtaining [an] a historic area work permit [shall be] is subject to the penalties [established] specified in Section 24A-11.

- (d) *Advice of [commission prior to application] Commission before applying.* The [commission shall] Commission must adopt procedures to encourage owners of historic [resourcesto] resources to seek the Commission's advice [of the commission prior to] before filing an application for [an] a historic area work

permit, on the appurtenances and environmental setting appropriate to the resource, construction methods and materials, financial information concerning historic preservation, or any other [matter under this chapter affecting] factor that would affect the issuance of a permit.

24A-7. Historic area work permits -Application procedures; appeals.

- (a) *Applications.* An applicant for [an] a historic area work permit must file an application with the Director. The application must contain all information the Commission requires to evaluate the application under this Chapter.
- (b) *Referral of application.* Within 3 days after the application is complete, the Director must forward the application to the Commission for review.
- (c) *Public meeting.* When the Commission receives the application, the Commission must schedule a public meeting to consider the application.
- (d) *Notice.* The Commission must notify the Director and any citizen or organization that the Commission reasonably determines has an interest in the application of the time and place of the public meeting.
- (e) *Conduct of Commission meeting.* The public meeting on the application must be informal, and formal rules of evidence do not apply. The Commission must encourage interested parties to comment and must keep minutes of the proceedings on the application.
- (f) *Action by the Commission.*
 - (1) The Commission must make a public decision on the application [under paragraph (2)] not later than 45 days after the applicant files the application or 15 days after the Commission closes the record on the application, whichever is earlier.
 - (2) The Commission must [instruct] order the Director to issue or deny the permit. The Commission may require the Director to issue the permit with reasonable conditions necessary to assure that work under the

permit does not harm the historical, architectural, archeological, or cultural value of the historic resource.

(3) If the Commission [instructs] orders the Director to deny the permit, the Commission must notify the applicant in writing why the Commission denied the application.

(4) The [commission] Commission must [instruct] order the Director to issue the permit if the Commission finds that[:]

[(A)] denial of the permit would prevent the reasonable use of the property or impose undue hardship on the owner[; and]

[(B) within 120 days after the finding in subparagraph (A), no person seeking preservation has submitted an economically feasible plan for preserving the structure].

(5) [If the Commission does not act on an application within the time periods provided in this subsection, the application is approved,] The Director must approve any application which the Commission does not act on within the time limits of this Section unless the applicant agrees to extend the deadline for Commission action.

(g) *[Miscellaneous provisions] Procedures.*

(1) The applicant for a permit has the burden of production and persuasion on all issues the Commission determines. If another historic preservation organization holds a deed of easement for the property in the application, the applicant must submit proof to the Commission that the organization conducted an exterior architectural review and approved the action for which the applicant is seeking a permit.

(2) (A) The Commission may, by regulations [issued under method (2)], delegate authority to a County employee qualified in historic preservation and assigned to staff the Commission to review and

approve an application for work that commonly has no more than an insignificant effect on [an] a historic resource.

(B) The regulations:

(i) must describe the types of work that Commission staff can review and approve, and require the Commission to review any application that is not clearly subject to staff approval; and

(ii) may waive the public meeting and notice requirements of subsections (c) and (d) for any [applications] application that is clearly subject to staff approval.

(C) If the staff denies or does not act on an application within 5 days after the Commission received the application from the Director, the Commission must review the application *de novo*.

(D) Staff must report monthly to the Commission and each appropriate Local Advisory Panel about any application reviewed by the staff in the previous month, including the disposition of the application.

(3) A permit may impose conditions that require waiver of a provision of the building code if the waiver is allowed under the "historic structures" provision of the building code adopted under Section 8-14 and the code inspector determines that waiver is appropriate for the specific work covered by the permit.

(4) The Director must enforce this Chapter.

(h) *Appeal*.

(1) Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals, which must review the decision *de novo*. The

Board of Appeals may affirm, modify, or reverse any order or decision of the Commission.

- (2) A party may appeal a decision of the Board of Appeals under Section 2-114.

24A-8. [Same-] Historic area work permit - Criteria for issuance.

(a) The [commission shall instruct] Commission must order the [director] Director to deny a permit if it finds, based on the [evidence and information presented to or] record before the [commission] Commission, that the alteration [for which the permit is] sought by the applicant would be [inappropriate, inconsistent with or] detrimental to the preservation[, enhancement] or ultimate protection of the historic site or historic resource [within an] in a historic district, and to the purposes of this Chapter.

(b) The [commission shall instruct] Commission must order the [director] Director to issue a permit, or issue a permit subject to [such] conditions [as are found to be] necessary to [insure] ensure conformity with the purposes and requirements of this [chapter] Chapter, if it finds [that] one or more of the following:

(1) [The] the proposal will not substantially alter the exterior features of [an] a historic site or historic resource [within an] in a historic district; [or]

(2) [The] the proposal is compatible in character and nature with [thehistorical] the historical, archeological, architectural, or cultural features of the historic site or the historic district [in which an] where a historic resource is located, and would not be detrimental thereto or to the achievement of the purposes of this [chapter] Chapter; [or]

(3) [The] the proposal would [enhance or] aid in the protection, preservation, and public or private utilization of the historic site or

historic resource located [within an] in a historic district in a manner compatible with the historical, archeological, architectural, or cultural value of the historic site or historic district [in which an] where a historic resource is located; [or]

(4) [The] the proposal is necessary [in order that] to remedy unsafe conditions or health hazards [be remedied]; [or]

(5) [The] the proposal is necessary [in order] so that the owner of the [subject] property is not [be] deprived of reasonable use of the property or does not suffer undue hardship; or

(6) [In] in balancing the interests of the public in preserving the historic site or historic resource located [within an] in a historic district[,], with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

(c) [It is not the intent of this chapter to] This Chapter does not limit new construction, alteration, or repairs to any 1 period or architectural style.

(d) [In the case of an application for work on an historic resource located within an historic district, the commission shall] The Commission must be lenient in its judgment of [plans] historic area work permit applications for:

(1) structures of little historical or design significance, or for plans involving new construction in a historic district, unless [such] the plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district; or

(2) altering a non-historic addition, if the addition was built before the property was identified on the Locational Atlas or the Master Plan for Historic Preservation.

24A-9. Demolition by neglect.

[In the event of a case of demolition by neglect of an] If a historic resource on public or private property has suffered demolition by neglect, the following provisions [shall] apply:

(a) If the historic resource has been designated on the master plan as [an] a historic site or [an] a historic resource [within an] in a historic district, the [director shall] Director must issue a written notice to [all persons] each person of record with any [right, title or] interest in the subject property, or the person occupying [such] the premises, of the conditions of deterioration, and [shall] must specify the minimum items of repair or maintenance necessary to correct or prevent further deterioration. The notice [shall provide] must require that corrective action [shall commence] begin within 30 days [of the receipt of such] after the recipient receives the notice and be completed within a reasonable time [thereafter]. The notice [shall] must state that the owner of record of the subject property, or any person of record with any [right, title or] interest therein, may, within 10 days after [the receipt of] receiving the notice, request a hearing on the necessity of the [items and conditions contained in such] actions required by the notice. [In the event] If a public hearing is requested, [it shall be held by] the [commission upon] Commission must hold it after 30 days' written notice mailed to [all persons] each person of record with any [right, title or] interest in the subject property and to [all citizens and organizations] any other person or organization [which the director feels] that the Director believes may have an interest in the proceedings.

(1) After a public hearing [on the issue of necessity of improvements to prevent demolition by neglect], if the [commission] Commission finds that [such] the improvements are necessary, it [shall instruct] must order the [director] Director to issue a final notice to be mailed to the record

owners and [all parties] each party of record with any [right, title or] interest in the subject property, advising of the items of repair and maintenance necessary to correct or prevent further deterioration. The owners [shall institute] must take all necessary corrective action to comply with the final notice within 30 days [of receipt of] after receiving the [revised] notice.

- (2) [In the event] If the corrective action specified in the final notice is not [instituted] taken within the time allotted, the [director] Director may [institute, perform and] complete the necessary remedial work, [to prevent deterioration by neglect and the] All expenses incurred by the [director] Director for [such] the work, labor, and materials [shall] must be a lien against the property, [and] draw interest at the highest legal rate, [the amount to] and be amortized over [a period of] 10 years, subject to a public sale [if there is a] after any default in payment.

- [(3)] Failure to comply with the original or final notice shall constitute a violation of this chapter for each day that such violation continues and shall be punishable as set forth in section 24A-11.]

- [(4)] (3) [In the event that] If the [commission] Commission finds that, notwithstanding the necessity for [such] the required improvements, taking the action [provided in] required under paragraphs (1) and (2) [of this subsection] would impose a substantial hardship on any [or all persons] person with any [right, title or] interest in the subject property, [then] the [commission shall] Commission must seek alternative methods to preserve the historic site or historic resource located [within an] in a historic district. If, [none are confirmed] after finding a substantial hardship, the Commission does not modify its order within a reasonable time, the [director shall] Director must not [proceed in

accordance with paragraphs (1) and (2)] enforce the original
Commission order.

- (b) If the historic resource is listed in the ["Locational Atlas and Index of Historic Sites in Montgomery County, Maryland," or the microfilmed addenda to such atlas, published by the Maryland-National Capital Park and Planning Commission] Locational Atlas, the [director shall] Director must advise the [planning board] Planning Board which, after [receiving the] giving the Commission a reasonable opportunity to submit a recommendation, [of the commission, shall] must conduct a public hearing to determine whether the historic resource will be [designated] recommended as [an] a historic site or historic district in the [master plan for historic preservation] Master Plan for Historic Preservation.

- (1) [Where] If the [planning board determines] Planning Board finds that it will not recommend that the historic resource [will not be included] for inclusion in the [master plan for historic preservation] Master Plan for Historic Preservation, the Planning Board must remove the resource from the Locational Atlas and take no further action [will be taken].
- (2) [Where] If the [planning board determines that the historic resource in all likelihood will be included] Planning Board recommends the resource for inclusion in the [master plan for historic preservation] Master Plan for Historic Preservation, the [planning board shall] Planning Board must initiate an amendment to the [master plan for historic preservation pursuant to the provisions of article 28 of the Annotated Code of Maryland] Master Plan for Historic Preservation under Chapter 33A.

[a.] (A) [In the event that such] If the amendment is adopted and the historic resource is [placed on the master plan for historic

preservation] included in the Master Plan for Historic Preservation as [an] a historic site or [an] a historic resource [within an] in a historic district, the [director shall] Director must give written notice to [all persons] each person with any [right, title, or] interest in the subject property of the conditions of deterioration, and [shall] must specify the items of repair or maintenance necessary to stabilize the condition of the historic resource and prevent further deterioration.

[b.] (B) [Such] The notice [shall] must provide that [such] any required stabilization work [shall commence] must start within 30 days [of receipt of] after the recipient receives the notice and [shall] must be completed within a reasonable time [thereafter].

[c.] (C) [In the event that] If stabilization action is not [instituted within the time allotted, or not] started or completed within a reasonable time [thereafter], the [director] Director may [institute, perform and] complete the necessary stabilization work, [and the] Any expenses incurred by the [director] Director for [such] the work, labor, or materials [shall] must be a lien against the property, [and] draw interest at the highest legal rate, [the amount to] and be amortized over [a period of] 10 years, subject to a public sale [if there is a] after any default in payment.

24A-10. [Moratorium on alteration or demolition] Locational Atlas and Index of Historic Sites.

(a) [*Application for permits for historic resources on locational atlas.*]

Administration.

The Planning Board must maintain the Locational Atlas.

(b) Amendments.

- (1) The Planning Board may place or remove any site on the Locational Atlas after:
- (A) giving the Commission an opportunity to submit a recommendation; and
- (B) conducting a public hearing.
- (2) If the Planning Board recommends a site for inclusion on the Master Plan for Historic Preservation, the Planning Board must place that site on the Locational Atlas.
- (3) The Council may place or retain any site on the Locational Atlas that the Planning Board has recommended for the Master Plan for Historic Preservation.
- (4) If the Council includes any site on the Master Plan for Historic Preservation, then the Planning Board must remove the site from the Locational Atlas.
- (5) If the Planning Board recommends including a site on the Master Plan for Historic Preservation but the Council does not place the site on the Master Plan for Historic Preservation, the Planning Board must remove the site from the Locational Atlas, unless the Council directs that the site be retained on the Locational Atlas.
- (6) During September 2009 and every 5 years thereafter, the Commission or its designee must notify every property owner on the Locational Atlas that:
- (A) the property is on the Locational Atlas; and
- (B) any demolition and alternative permit application will be processed under subsection (c).
- (c) Demolition and alteration permits.

(1) Any applicant for a permit to demolish or substantially alter the exterior features of any historic resource [which is] listed in the ["Locational Atlas and Index of Historic Sites in Montgomery County, Maryland," or the microfilmed addenda to that atlas, published by the Maryland-National Capital Park and Planning Commission] Locational Atlas, but which is not designated as [an] a historic site or historic district on the [master plan for historic preservation] Master Plan for Historic Preservation, must disclose that fact on the application.

(2) If the [historic resource] site or district is included in the Locational Atlas or is located in an area under review for designation as [an] a historic district and is not under review for designation as [an] a historic site, the application must, at the option of the applicant, be:

(A) reviewed by the Commission under the historic area work permit procedure [in Section 24A-7 if the applicant seeks review under that Section] ; or

(B) referred to the Planning Board under subsection (d).

[(b)] (d) *Referral to the [planning board] Planning Board.* If the applicant does not seek [review under Section 24A-7] a historic area work permit, the Director must promptly forward the permit application to the Planning Board. The Planning Board must decide whether to recommend the resource for inclusion in the Master Plan for Historic Preservation after holding a public hearing and considering any recommendation of the Commission [to make a finding, after a public hearing, as to the significance of the historic resource and to determine whether, after considering the recommendations of the Commission, the property will be designated as an historic site or an historic resource within an historic district, listed in the master plan for historic preservation]. The Planning Board's public hearing on an application to

demolish or substantially alter any historic resource listed in the [locational atlas] Locational Atlas satisfies the requirements of [section] Section 33A-6 for a public hearing on a preliminary draft amendment to the Master Plan for Historic Preservation [historic preservation master plan] if all notice requirements of [that section] Section 33A-6 are [met] satisfied.

[(c))(e) *[Determination] Decision by the [planning board] Planning Board.*

(1) [Where] If the [planning board determines] Planning Board decides that the historic resource will not be [included] recommended for inclusion in the [master plan for historic preservation] Master Plan for Historic Preservation, the [director shall forthwith issue] Director must approve the permit, and the Planning Board must remove the site from the Locational Atlas.

(2) [Where] If the [planning board determines] Planning Board recommends that the historic resource [in all likelihood will] should be included in the [master plan for historic preservation] Master Plan for Historic Preservation, the [director shall withhold issuance of the permit once] Director must not approve the permit for [a maximum period of] at least 195 days [from the date] after the application for demolition [is] was filed. If [, as a result of the master plan process,] the property is designated [an] a historic site or [an] a historic resource [within an] in a historic district and the application was not previously approved, the application [shall be governed by the procedures established in section 24A-7] must be processed as a historic area work permit.

[If, after a public appearance as provided for in section 24A-7, the commission determines that failure to grant the permit applied for will have the effect of denying the property owner of all reasonable use of his property or causing him to suffer undue hardship, then the

commission must instruct the director to issue the permit subject to such conditions, if any, as are found to be necessary to insure conformity with the purposes and requirements of this chapter.]

[(d)](f) *Time limits for [planning board] Planning Board action.*

(1) Within 60 days after [the filing of] an application is filed, or within 15 days after the [closing of the record following a public hearing] hearing record closes, whichever occurs later, the [planning board shall render its findings and determinations with respect to an] Planning Board must decide on the application.

(2) [Failure to adhere to the limits] If the Planning Board does not issue its decision in the time specified in [section 24A-10 shall cause] paragraph (1), the Director must issue the permit [to issue] by operation of law[, except in the event of a finding and further proceedings as provided in] unless issuance of the permit is stayed under subsection [(c)] (e)(2) [of this section].

24A-11. [Violations and Penalties] Master Plan for Historic Preservation.

(a) (1) As an amendment to the General Plan for the County, the Planning Board prepared and the Council adopted a Master Plan for Historic Preservation. This plan designates historic sites and historic districts, describes their boundaries, and integrates historic preservation into the planning process.

(2) Amendments to the Master Plan for Historic Preservation must be approved and adopted under Chapter 33A.

(A) If the Council approved work program for the Planning Board includes the consideration of particular sites or districts for inclusion in the Master Plan for Historic Preservation, such amendments must be submitted for the Council's consideration.

(B) The Planning Board may also submit other amendments that it recommends for Council approval.

(b) For all sites and districts considered for designation after {effective date}:

(1) If the property owner consents to the site's inclusion in the Master Plan for Historic Preservation, then the Planning Board must find at least 1 of the following criteria when it recommends a historic resource for inclusion in the Master Plan for Historic Preservation:

(A) *Historical and cultural significance.* The historic resource:

(i) has character, interest, or value as part of the development, heritage, or cultural characteristics of the County, state, or nation;

(ii) is the site of a significant historic event;

(iii) is identified with a person or a group of persons who influenced society; or

(iv) exemplifies the cultural, economic, social, political, or historic heritage of the County and its communities.

(B) *Architectural and design significance.* The historic resource:

(i) embodies the distinctive characteristics of a type, period, or method of construction;

(ii) represents the work of a master;

(iii) represents a significant and distinguishable entity whose components may lack individual distinction; or

(iv) represents an established and familiar visual feature of the neighborhood, community, or County because of its singular physical characteristic or landscape.

(2) If the property owner does not consent to the site's inclusion in the Master Plan for Historic Preservation, then 4 members of the Planning

Board must find the following when it recommends a historic resource for inclusion in the Master Plan for Historic Preservation:

(A) at least 3 criteria in subsection (b)(1); and

(B) the public interest in preserving the historic resource outweighs the interests of the objecting property owner to recommend a site for inclusion in the Master Plan for Historic Preservation.

(c) If the Planning Board does not recommend an amendment to the Master Plan for Historic Preservation to include a site or district after receiving any recommendation of the Commission, the Planning Board must not submit a master plan amendment to the Council that includes that site or district; however, the Planning Board must submit its recommendation to the Council if the Council amended the Planning Board's work program to include consideration of the subject site or district.

[24A-11] 24A-12. Violations and penalties.

Any person who violates [a provision of] this [chapter] Chapter, [or fails to comply with any of the requirements thereof, or disobeys or] disregards a decision of the [commission] Commission, or [fails to abide by] does not satisfy the conditions of a permit, [shall be subject to punishment for] has committed a class A violation [as set forth in section 1-19 of chapter 1 of the County Code]. Each day a violation continues [to exist shall constitute] is a separate offense.

[24A-12 Severability.

The provisions of this chapter are severable and if any provisions, clause, sentence, section, word or part thereof is held illegal, invalid or unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts of the chapter or their applications to other persons or circumstances. It is hereby declared to be the

legislative intent that this chapter would have been adopted if such illegal, invalid or unconstitutional provision, clause, sentence, section, word or part had not been included therein, and if the person or circumstance to which the chapter or part thereof is inapplicable had been specifically exempted therefrom.]

[24A-13. Historic preservation easement program.]

(a) There is a county easement program to preserve historic resources in Montgomery County. The commission must administer the program in accordance with this section.

(b) (1) An owner of an historic resource may offer the county a preservation easement to protect or conserve interior or exterior features of the historic resource and its environmental setting or appurtenances by making application to the commission.

(2) Upon receipt of an application, the commission must immediately forward the application for review and comment to:

(A) the planning board if the historic resource is located in the Maryland-Washington Regional District; and

(B) the appropriate agency of a municipality if the historic resource is located within a municipality.

Review and comment under this paragraph must be made within 45 days and should include an evaluation of the proposal using the criteria specified in this section as well as identification of competing or supporting land use priorities or other relevant factors or issues. Recommendations may include proposed easement terms and conditions.

(3) The commission must review the application to determine if acceptance of the preservation easement would further the

county's historic preservation goals. In making its determination, the commission should consider, among other relevant factors:

- (A) the relative significance of the historic resource;
- (B) the structural condition;
- (C) the owner's planned or completed preservation efforts;
- (D) the existing zoning and nature of the surrounding neighborhood; and
- (E) whether an easement will promote long-term survival of the historic resource.

(c) If the historic resource is designated as an historic site in the county master plan for historic preservation, either as an individual site or located within an historic district, the county may acquire an easement upon positive recommendation of the commission and approval of the county executive. If the historic resource is not designated as an historic site in the master plan, the additional approval of the county council is required prior to any acceptance by the county. The commission must forward any comments received under subsection (b)(2) to the county executive and the county council, as appropriate.

(d) A preservation easement under this section should be granted in perpetuity and include appropriate terms and conditions that:

- (1) restrict changes and alterations;
- (2) require maintenance, repairs, and administration;
- (3) authorize public access;
- (4) provide a right of governmental inspection;
- (5) provide for a right of assignment to the Maryland Historical Trust or other appropriate agency or entity; and
- (6) establish enforcement remedies.

- (e) The county may hold a preservation easement jointly with the Maryland Historical Trust.
- (f) A preservation easement must be recorded by the grantor among the land records of the county at the grantor's cost. The grantor must notify the supervisor of assessments and the Office of the Public Tax Advocate of the recordation of the preservation easement.
- (g) Reserved.
- (h) A preservation easement may be extinguished by judicial proceeding if an unexpected change in the conditions applicable to the property, such as casualty, make it impossible or impractical to continue to use it for preservation purposes. The terms of an easement related to extinguishment should identify appropriate changes in condition, provide that the county share in any proceeds from a subsequent sale or exchange of the property after the easement is extinguished, and be in accordance with any applicable executive regulations. The sharing in proceeds may include the recapture of property taxes saved by the grantor or its successor in interest, either in part or in full, as a result of the easement.
- (i) The commission may enter into a cooperative agreement with the Maryland Historical Trust or other appropriate agencies or entities for technical assistance in administering the historic easement program. This may include assistance in property evaluation, negotiation, and inspection.
- (j) (1) The easement program authorized under this section is in addition to, and does not supersede or otherwise affect, any other county or municipal program or policy requiring the donation of a preservation

easement as a condition of financial assistance. It must operate in conjunction with other county or municipal easement programs.

(2) The grant of an easement under this section does not eliminate or otherwise alter any county or municipal regulatory requirement applicable to the historic resource, including any requirement to obtain an historic area work permit.

(k) The county executive, with the advice of the commission, may adopt regulations under method (2) to administer the historic preservation easement.]

Sec. 2. Effective Date. This ordinance takes effect 20 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council